IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6285 OF 2005

Shri. Hanumant S. Landge ...Applicant
Vs.
The State of Maharashtra ...Respondent

Mr. Rajay Gaikwad i/by Manoj Bhat for the Applicant.
Ms S.D. Shinde, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 28, 2005.

P.C.:

1. Heard the Advocate appearing for the Applicant and the learned A.P.P. for the State. Offence has been registered on the basis of complaint filed by one Vithal Sonaji Surwade alleging commission of offence under sections 304, 452, 323, 506 read with section 34 of the Indian Penal Code. The Advocate for Applicant pointed out that the Applicant himself is the first informant in the serious offence registered against the son of said Vithal and the said son is absconding. The learned Advocate for the Applicant invited my attention to the F.I.R. filed by the Applicant alleging commission of offence under sections 302, 324, 504, 506, 427 and 351 read with section 34 of the Indian Penal Code against the son of the said Vithal Surwade. He pointed out that in the F.I.R. registered against the Applicant only allegation against the Applicant is that he came early in the morning at 04.00 a.m. to the house of the first informant and enquired about the whereabouts of the

son of the first informant Vithal. When the Applicant reached the house, there was no electricity. The allegation in the F.I.R. is that the Applicant threatened the first informant. At that time the daughters-in-law of the first informant tried to intervene and there was a scuffle. The mother of the Applicant was sleeping on the floor. The allegation is that at that time, the Applicant placed his feet on the legs below her knees. As a result of which the mother expired. He submitted that even taking the prosecution case as true, at the most section 304-A of the Indian Penal Code will be attracted.

2. The learned A.P.P. has placed papers relating to investigation for my perusal. The learned A.P.P. invited my attention to the supplementary statement of the first informant and statements of the daughters-in-law of the first informant in which it is stated that in the fight, and the Applicant’s foot was placed on the chest of the mother of the first informant. The learned A.P.P. also invited my attention to the Post Mortem Notes which show injuries on the leg and fracture of some of the ribs of the deceased. The learned A.P.P. submitted that the offence is of serious nature requiring custodial interrogation of the Applicant. The learned A.P.P.

did not dispute that the the son of the first informant is absconding who is an accused in F.I.R. lodged by the Applicant for commission of offence under section 302 of the Indian Penal Code.

3. I have considered the submissions. F.I.R. records that the incident has taken place at 04.00 a.m. when there was no electricity supply in the house of the first informant. When the Applicant enquired about the whereabouts of the son of the first informant, there was a scuffle involving the said Vithal, his daughters-in-law and the Applicant. The only allegation in the F.I.R. is that feet of the Applicant were placed on the portion of the legs of the old mother below knees. It was dark and the mother of the first informant was sleeping on the floor. The mother succumbed to death as a result of the injuries sustained. In the supplementary statement it was added that of the Applicant’s foot was on the chest of the mother of the first informant.

4. The age of the deceased lady is stated as more than hundred years. Neither the first informant nor any of the witnesses have alleged that there was any intention on the part of the Applicant to cause any harm to the deceased mother of the first informant.

Taking the prosecution case as it is, it is apparent that there was complete darkness in the house as there was no electricity supply While the scuffle between the Applicant and the first informant and his daughters-in-law went on. It is alleged that the Applicant placed his feet on the chest and on legs of the old lady who was sleeping on the floor. Even going by allegations of the first informant and his daughters-in-law, this act on the part of the Applicant seems to be prima facie accidental. There is some substance in the submission made by the Advocate for the Applicant that at highest section 304-A will apply which is a bailable offence. However, it is ultimately a matter of evidence. This is not a case where any recovery is to be made at the instance of the Applicant. Police have admittedly recorded statements of alleged eye-witnesses. None of them have alleged that the Applicant has caused injury to the deceased intentionally or knowingly. In my view, case is made out for grant of pre-arrest bail subject to stringent conditions.

5. Hence, I pass the following order:

: O R D E R :

i) In the event of the arrest of the Applicant in connection with C.R.No.I-289 of 2005 registered with Mumbra Police Station, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.10,000/-(Rupees Ten Thousand) with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicant will attend the concerned Police Station on every Monday between 10.00 a.m. to 05.00 p.m. till the filing of the chargesheet and will co-operate for investigation.

iii) The Bail is granted subject to condition that the Applicant shall not, direclty or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/Investiating Agency. The Applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicant only till chargesheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE